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CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

BILLY L. ROHWEDDER,

Plaintiff,

v.

ROCKY MOUNTAIN PIES, *et al.*,

Defendants.

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
WITHOUT PREJUDICE**

Case No. 2:20-cv-00034-JNP-CMR

District Judge Jill N. Parrish

Before the court is Plaintiff Billy L. Rohwedder's ("Plaintiff") Motion for Summary Judgment. ECF No. 13. For the following reasons, the court denies Plaintiff's Motion.

Plaintiff filed his initial complaint in this action on January 21, 2020. ECF No. 3. In response, Defendant Rocky Mountain Pies ("Defendant") filed a motion to dismiss on April 23, 2020. ECF No. 9. Before the court ruled on the motion to dismiss, Plaintiff filed the pending Motion for Summary Judgment on October 8, 2020 (ECF No. 13) as well as an amended complaint on December 17, 2020 (ECF No. 16). On January 5, 2021, the court issued an order adopting Magistrate Judge Cecilia M. Romero's report and recommendation to give Plaintiff leave to amend his complaint and treating the amended complaint that Plaintiff had previously filed (ECF No. 16) as the operative complaint. ECF Nos. 14, 23. To date, an answer to the operative amended complaint has not been filed, nor has any discovery been conducted in the case. Defendants have not responded to Plaintiff's Motion for Summary Judgment.

A motion for summary judgment is granted if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R.

Civ. P. 56(a). Plaintiff's Motion for Summary Judgment was filed before his amended complaint (ECF No. 16) was filed, before an answer to the amended complaint has been filed, and before any discovery has been conducted. Based upon the foregoing, the court cannot conclude that there is no genuine dispute as to any material fact and that Plaintiff is entitled to judgment as a matter of law. Thus, the court finds that granting a motion for summary judgment at this juncture would be premature. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (holding that a court should enter summary judgment "after adequate time for discovery"); *see also Bryant v. O'Connor*, 848 F.2d 1064, 1068 (10th Cir. 1988) ("[D]iscovery is strongly favored before summary judgment is granted[.]"); *Burke v. Utah Transit Auth.*, 462 F.3d 1253, 1264 (10th Cir. 2006) ("[S]ummary judgment [should] be refused where the nonmoving party has not had the opportunity to discover information that is essential to his opposition." (citation omitted)).

Accordingly, it is HEREBY ORDERED that Plaintiff's Motion for Summary Judgment (ECF No. 13) is DENIED without prejudice.

DATED January 20, 2021.

BY THE COURT



Jill N. Parrish
United States District Court Judge